



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/676,618	10/01/2003	Andrew S. Neely	57793.US	7947

408 7590 11/17/2004

LUEDEKA, NEELY & GRAHAM, P.C.  
P O BOX 1871  
KNOXVILLE, TN 37901

EXAMINER

EDELL, JOSEPH F

ART UNIT PAPER NUMBER

3636

DATE MAILED: 11/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/676,618

Applicant(s)

NEELY ET AL.

Examiner

Joseph F Edell

Art Unit

3636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 6-8, 12-16 and 18-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 9-11 and 17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election of Species I in the reply filed on 20 October 2004 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

### ***Claim Objections***

2. Claims 1-5, 9-11, and 17 are objected to because of the following informalities:
  - a. subsections of the claim language (for example claim 1, line 2, "...A plurality of poles...") should not be capitalized;
  - b. claim 4, line 3, "the three corners" should read --three corners--;
  - c. claim 5, line 1, "where in" should read --wherein--;
  - d. claim 9, line 4, "the jaws" should read --jaws--;
  - e. claim 10, line 3, "the jaws" should read --jaws--;
  - f. claim 11, line 3, "the jaws" should read --jaws--.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Art Unit: 3636

4. Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 11, "a closure mechanism" and "a release mechanism" are recited in claim 1, lines 9 and 11, and "a closure mechanism" and "a release mechanism" are recited in dependent claim 11, lines 4 and 6. It is unclear whether these limitations define the same structural elements of claim 1 or define separate structural elements distinct from the closure mechanism and release mechanism recited in claim 1.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 2, and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 2,821,762 to Foose.

Foose discloses a pole and structure apparatus that includes all the limitations recited in claims 1, 2, and 5. Foose shows a pole and structure apparatus having a plurality of poles 13,14 (Fig. 1), a holder 11 (Fig. 1) having an open position (Fig. 5) and a closed position (Fig. 5), a hub (Fig. 2) with a plurality of movable hub components forming cylindrical sleeves to receive and grip the poles when in the closed position and

Art Unit: 3636

release the poles when in the open position, a closure mechanism 16,17 (Fig. 2) that is an over-the-center clamp, and a release mechanism 18,19 (Fig. 2) associated with the holder and the closure mechanism.

7. Claims 1, 2, and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,066,373 to Workman.

Workman discloses a pole and structure apparatus that includes all the limitations recited in claims 1, 2, and 5. Workman shows a pole and structure apparatus having a plurality of poles 6,7 (Fig. 1), a holder 1 (Fig. 1) having an open position (Fig. 2) and a closed position (Fig. 3), a hub (Fig. 3) with a plurality of movable hub components forming cylindrical sleeves to receive and grip the poles when in the closed position and release the poles when in the open position, a closure mechanism (Fig. 2) that is an over-the-center clamp, and a release mechanism (Fig. 2) associated with the holder and the closure mechanism.

8. Claims 1, 3, 4, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,975,626 to Aycock.

Aycock discloses a pole and structure apparatus that includes all the limitations recited in claims 1, 3, 4, and 17. Aycock shows a pole and structure apparatus having a plurality of poles 71,72,73 (Fig. 5) forming a tripod structure, a holder 40 (Fig. 5) having an open position (Fig. 5) and a closed position (Fig. 7), a closure mechanism 42,43,44 (Fig. 5), a release mechanism 45,441 (Fig. 5) associated with the holder and the closure mechanism, and a triangular seat (Fig. 7) with three corners and pockets to receive upper ends of the poles.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 2, 5, and 9-11, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Aycock in view of Workman.

Aycock discloses a pole and structure apparatus that is basically the same as that recited in claims 2, 5, and 9-11, as best understood, except that the holder lacks a plurality of movable hub components, as recited in the claims. See Figure 6 of Aycock for the teaching that the holder has a plurality of inclined cylindrical receivers 421.

Workman shows a pole and structure apparatus similar to that of Aycock wherein the apparatus has a hub (Fig. 2) with a plurality of movable hub components forming cylindrical sleeves to receive and grip the poles when in the closed position and release the poles when in the open position, a core (Fig. 2) with a plurality of semi-cylindrical surface 41,42 (Fig. 2), a jaw 37,39 (Fig. 2) movable between the open position and the closed position, and a hinge 11 (Fig. 2) mounting the jaw to form cylindrical receivers. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of Aycock such that the holder has a hub with movable hub components to move between a closed position and an open position, a core with a plurality of semi-cylindrical inclined surfaces, a plurality of jaws

Art Unit: 3636

with mating semi-cylindrical inclined surfaces, a plurality of hinges that each mount one jaw on the core to be movable between the closed position and the open position to form cylindrical receivers, such as the apparatus disclosed in Workman. One would have been motivated to make such a modification in view of the suggestion in Workman that the hub and core configuration allows for poles that may be removable through pivoting of the jaw to the open position.

### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents are cited to further show the state of the art with respect to pole and structure apparatuses:

U.S. Pat. No. 647,171 to Wiles

U.S. Pat. No. 2,710,733 to Phillips

U.S. Pat. No. 4,184,711 to Wakimoto

U.S. Pat. No. 4,717,108 to Liedle

U.S. Pat. No. 4,934,638 to Davis

U.S. Pat. No. 6,270,156 B1 to Metzger et al.

JP Pat. No. 06-245840 A to Kondo

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph F. Edell whose telephone number is (703) 605-1216. The examiner can normally be reached on Mon.-Fri. 8:30am-5:00pm.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

Art Unit: 3636

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.


For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

JE

November 9, 2004

  
Peter M. Cuomo  
Supervisory Patent Examiner  
Technology Center 3600